

**FARRIS MATHEWS BRANAN  
BOBANGO & HELLEN, PLC**

ATTORNEYS AT LAW

REC'D TN  
REGULATORY AUTH.

HISTORIC CASTNER-KNOTT BUILDING  
618 CHURCH STREET, SUITE 300  
NASHVILLE, TENNESSEE 37219

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OFFICE OF THE  
EXECUTIVE SECRETARY

Charles B. Welch, Jr.  
cwelch@farrismathews.com

Telephone: (615) 726-1200  
Facsimile: (615) 726-1776

Writers Direct Dial:  
615-687-4230

June 13, 2002

Mr. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

Re: *Rulemaking Proceeding Concerning Regulations for the Provisioning of  
Tariff Term Plans and Special Contracts*  
Docket No. 00-00702

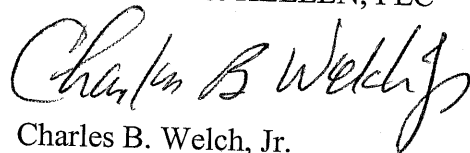
Dear Mr. Waddell:

Enclosed please find an original and thirteen (13) copies of Time Warner Telecom of the Mid-South, L.P.'s Comments in the above-referenced docket. Copies have been served on all parties of record.

If you have any questions, please contact me.

Very truly yours,

FARRIS MATHEWS BRANAN  
BOBANGO & HELLEN, PLC



Charles B. Welch, Jr.

CBW:lw

Enclosures

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:**

**PROPOSED RULES FOR THE  
PROVISIONING OF TARIFF TERM  
PLANS AND SPECIAL CONTRACTS.**

**Docket No. 00-00702**

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**COMMENTS OF TIME WARNER TELECOM OF THE MID-SOUTH, LP.**

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Time Warner Telecom of the Mid-South, L.P. ("Time Warner") submits these comments, through counsel, at the invitation of the Directors of the Tennessee Regulatory Authority ("TRA") extended during the June 11, 2002 Conference. These comments are filed in response to the Opinion of the Office of the Attorney General dated May 31, 2002, filed in conjunction with the disapproval of proposed TRA Rules, Chapter 1220-4-2. More particularly, the Directors have invited comments as to the Attorney General's Opinion concerning two specific issues. These issues are: (1) How should the TRA respond to the Attorney General's conclusion that redacted portions of BellSouth's Contract Service Arrangements ("CSAs") on file with the TRA violates the Tennessee Public Records Act, and (2) How does the Attorney General's Opinion affect special contracts of Competing Local Exchange Carriers (CLECs).

**I. Public Records Act**

BellSouth has offered to make customer names and addresses previously redacted from its CSAs public pursuant to the order of the TRA or with permission of its customers. Either of these alternatives should satisfy the concern of the Attorney General.

CLECs have not been required nor have they filed special contracts. Since the CLEC

contracts are not in the possession of the TRA and are not, therefore, "state records," there is no violation of the requirement set forth in T.C.A. §10-7-503.

Currently, CLECs file summaries of special contracts pursuant to previous order of the TRA in the form which would have been required by the proposed rule. These summaries have always been treated as public records and are open to public inspection. The appropriate treatment of the CLEC summaries as state records does not pose a public records issue.

## **II. CLECs Special Contracts**

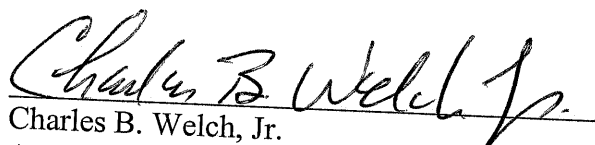
Time Warner submits that the portion of the Attorney General's Opinion that raises concerns and discusses issues pertinent to the content, consideration and approval of special contracts is applicable only to Incumbent Local Exchange Carriers ("ILECs") and, therefore, does not apply to or in any way affect CLECs special contracts. CLECs have consistently maintained, and the TRA has recognized, that asymmetrical regulation is appropriate in considering pricing of services determined by tariffs or special contracts. CLEC tariff filing requirements are different, and their special contracts have become effective without review or approval. This regulatory distinction is based upon the significant differences between dominant and non-dominant providers. Tennessee is not unique in this approach. The FCC has always recognized the distinction and the necessity for asymmetrical regulation. For example, the FCC rules applicable to CSAs referenced in the Attorney General's Opinion at page 4 are only applicable to ILECs. Further, since 1996, the FCC has provided permissive de-tariffing to CLECs. This alternative allows CLECs to choose whether to file tariffs. If the CLEC chooses to file a tariff, it is required to file a summary of its special contracts which includes a description of the services, but does not include an identification of the customer. If the CLEC chooses not to file a tariff, the special contract summary is not required. In either

scenario, the CLEC special contract is not subject to the elaborate approval process described by the Attorney General.

Although the Attorney General rejected the proposed rules based upon a violation of the Public Records Act, the Opinion raises a number of other issues relative to discriminatory and illegal rates and termination charges. Conspicuously, the Opinion does not mention any feature of the asymmetrical treatment or regulation of CLEC special contract embodied in those same rules. The logical conclusion is that the Attorney General recognizes the distinction between dominant or monopoly providers, and non-dominant, competing providers and the appropriate regulatory treatment of their respective pricing arrangements. Time Warner respectfully submits, therefore, that the Attorney General's Opinion does not address nor is it intended to apply to or affect the regulatory treatment of CLECs special contracts.

Respectfully submitted,

FARRIS, MATHEWS, BRANAN,  
BOBANGO & HELLEN, P.L.C.



Charles B. Welch, Jr.  
Attorney for Time Warner Telecom of the  
Mid-South, L.P.  
618 Church St., Suite 300  
Nashville, TN 37219  
(615) 726-1200

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served via U.S. Mail, postage prepaid, upon the following, this the 13<sup>th</sup> day of June, 2002.

Timothy Phillips, Esq.  
Office of the Attorney General  
PO Box 20207  
Nashville, TN 37202

Deborah A. Verbil, Esq.  
SBC Telecom, Inc.  
5800 Northwest Pkwy, #125  
San Antonio, TX 38249

James Lamoureux, Esq.  
AT&T 1200 Peachtree St., NE  
Atlanta, GA 30309

James Wright, Esq.  
United Telephone  
14111 Capitol Blvd.  
Wake Forest, NC 27587

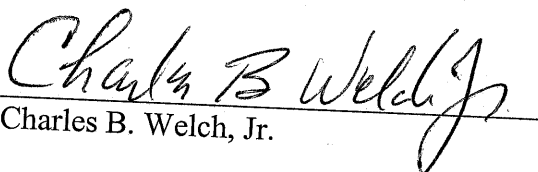
Christopher Warren  
Lexus of Nashville  
1363 Westgate Circle  
Brentwood, TN 37027

Jon E. Hastings, Esq.  
Boult, Cummings, et al.  
PO Box 198062  
Nashville, TN 37219

Don Baltimore, Esq.  
Farrar & Bates  
211 7<sup>th</sup> Ave., N., #320  
Nashville, TN 37219

Henry Walker, Esq.  
Boult, Cummings, et al.  
PO Box 198062  
Nashville, TN 37219

Guy M. Hicks  
BellSouth Telecommunications  
333 Commerce St.  
Nashville, TN 37219

  
Charles B. Welch, Jr.